

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, orders or Registrar's	Court's or Judge's orders.
--	--	-------------------------------------	----------------------------

CRIMINAL APPLICATION NO. 674 OF 2014
WITH APPLN/675/2014

GAJANAN DAMODHAR MHATRE AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicants : Mr. Waghmare Praveen B.
APP for Respondent: Mr. N. B. Patil.

CORAM:
DATED:

T. V. NALAWADE, J.
12th JANUARY, 2015.

PER COURT:

1. The application is filed for bail.
2. The previous Criminal Application No. 4759 of 2013 was rejected by this Court on merits by order dated 23rd October, 2013. Learned counsel for the Applicant submitted that the order made by this Court on 23rd October, 2013 was not challenged in Apex Court. In view of this circumstance, the learned counsel was asked to

argue on change in circumstances. Learned counsel for the Applicant submitted that the applicants are behind bars for the period of 2 years and 3 months and due to this circumstances, the applicants are entitled to get bail.

3. The learned counsel for the Applicants submitted that the case is now fixed for framing of charge. Special Judge is appointed to try the M.C.O.C. cases and provisions of M.C.O.C. Act are used against the Applicants. It can be said that at present the case is ready for starting of the hearing of the case. The learned counsel for the Applicants also submitted that the application is moved for grant of discharge. This also can be the circumstance for not framing the charge.

4. This Court has found that there has been no change in circumstances. This Court has dismissed the previous application on merits of the case. Learned counsel for the Applicant placed reliance on one case reported as **2006 ALL MR (Cri) 2655 (S.C.) [Babarrao Tukaram Ranjane V/s State of Maharashtra]**. In that case, bail was granted to Deputy Superintendent of Police as he was behind bar for about 2 years and 3 months. The case against said Deputy

Superintendent was different and there were allegations that he had helped Telgi in the stamps scam investigation. The allegations against the present applicant are different. There is allegation against Gajanan that he hired gang for murdering his son and so the facts are different. Learned counsel for the Applicant placed reliance on the case reported as **2014 ALL MR (Cri.) 2189 [decided by principal Seat - between Aakif Ateeque Nachan and State of Maharashtra]**. He submitted that in that case, the Court granted bail by observing that the accused, to whom bail was granted, was only one of the conspirators. The facts and circumstances of each and every case are different. There cannot be a ratio of observations made in bail application by High Court and that can not be used as precedent as the observations are generally on the facts of that case. Learned counsel for the applicants placed reliance on case reported as **2014 SCC Online SC 264 [between Mahipal Singh V/s C.B.I. and another]** and he submitted that at-least Gajanan was involved only in one case when MCOCA was used and so MCOCA cannot be used against him. He submitted that at the time of invoking MCOCA there was only one charge sheet and

MCOCA could not have been used. This submission is not acceptable. He hired gang of criminals and that way he became member of the gang. In view of this, the observations made by the Apex Court cannot be used in favour of the Applicant.

5. This Court is quoting the previous order made by this Court in the present matter in which the merits of the matter are considered.

1. *The application is filed by Imran Mehendi, Habib Khaled, Juber Khan, Gajanan Mhatre for bail in Sessions Case No. 285/2012, which is pending in the Court of Additional Sessions Judge, Aurangabad. The case is filed for offences punishable under sections 302, 120-B, 201, 328, 109, 114 and 34 of Indian Penal Code. There are allegations against applicant Nos. 1 to 3 that they were hired by applicant No. 4 to murder son of applicant No. 4 by name Nilesh. There are allegations that Nilesh was murdered in the month of April 2011. These applicants and others are also involved in many other cases including the case filed under Maharashtra Control of Organised Crime Act, 1999 ('MCOC Act' for short).*

2. *The aforesaid case was filed in C.R. No. 81/2012 registered on the basis of report given by one P.S.I. Shri. Shinde in Begumpura Police Station, Aurangabad. He is member of S.I.T. created in the office of Police Commissioner, Aurangabad. When he was making investigation of*

C.R. No. 19/2012 registered in Begumpura Police Station for offence of another murder and when he was interrogating accused Noman Khan, Noman Khan admitted the commission of many other crimes of murder including the present one. Shinde collected following information from Noman Khan and others :-

"In April 2011 applicant Gajanaj Mhatre, who was working as a Police Constable, hired the other applicants and their associates to murder his son Nilesh. Applicant Imran Mehendi is the leader of this gang. Gajanaj Mhatre gave advance of Rs. 50,000/- to this gang for doing this job and remaining amount was to be given after the murder. As per the plan, Gajanan called Nilesh from Washi, where Nilesh was living by telling him that he had found a job for Nilesh in Aurangabad. Nilesh was asked to come by bus and he was to be collected at Aurangabad S.T. Stand. Nilesh was to be collected by this gang and then the job was to be done. Mobile number of Nilesh was supplied to this gang by Gajanan.

Imran Mehendi and other applicants waited at S.T. stand for collecting Nilesh. When Nilesh came, he was told that the applicants were asked to help him and they took him in Indica car bearing No. MH-20/AK-111, which was brought by Imran Mehendi, to Delhi Gate. Associate of Mehendi namely accused Habib was already ready at Delhi Gate with a drink Lassi and Habib had mixed some material in Lassi to make Nilesh unconscious. After drinking Lassi, Nilesh became unconscious. Mehendi and his associates took

Nilesh towards Chalisgaon Ghat. From the main road the car was taken to Kaccha road for the distance of half k.m. and there the car was stopped. Nilesh was taken outside and then Imran Mehendi hit a stone on the head of Nilesh. Noman Khan also hit a stone on the head of Nilesh to confirm that he was dead. When they confirmed that Nilesh was dead, they left the dead body there only and they returned to Aurangabad."

3. *After narrating the aforesaid information, Noman Khan took police to the spot where Nilesh was murdered. The incident was recorded in the presence of panch witnesses. Police made enquiry with the concerned Police Patil and they learnt that on 27.4.2011 the dead body of one unknown person was found on that spot and on the basis of report given by Police Patil, crime at C.R. No. 91/2011 was registered in Chalisgaon Police Station for offence under section 304-A, 279 of I.P.C. and also under some provisions of Motor Vehicle Act. Police Patil had thought that some vehicle had given dash to deceased. The crime was registered against unknown person.*

4. *After collecting the aforesaid information, police from S.I.T. went to Chalisgaon Police Station and from there the clothes on the dead body were taken over from Chalisgaon police. Chalisgaon police had taken the photographs of the dead body. These photographs were also collected by S.I.T. police. At the relevant time, mother of Nilesh was alive and from her, photograph of Nilesh was collected. After*

comparing the photographs, S.I.T. police realised that the dead body shown in C.R. No. 91/2011 by police officer was of Nilesh. The P.M. record showed that the skull was in depressed condition, it was virtually crushed and the death took place due to the head injury.

5. *As the dead body was of unknown person, it was buried by Chalisgaon Police in burial place. The statements of persons involved in this job and record in that regard was collected. However, the persons, who had buried the dead body could not identify the spot as many dead bodies were buried there and some construction was made on that spot. Police could not get the dead body for D.N.A. test, but there was aforesaid record to confirm the identity of Nilesh.*

6. *The photograph supplied by mother of Nilesh was shown to Police Patil and other persons, who were involved in the burying the dead body and they identified this photograph as of the same dead body, which was buried by them. There are many statements of other persons including relatives and neighbours to whom the photograph of dead body taken by Chalisgaon police was shown.*

7. *During investigation, it was revealed that the Indica car used by Imran Mehendi was of one Hanif and the car came to be recovered.*

8. *The investigation revealed that Gajanaj Mhatre had married two wives. Sindhubai was his first wife and Nilesh was born to Sindhubai. Indubai is the second wife of Gajanan. On the basis of report given by Indubai regarding*

theft, Nilesh was arrested in past with his associate by Begumpura police and due to that, Mhatre had feeling that due to Nilesh his family was defamed. Mhatre had then taken decision to finish Nilesh and so, he had hired the gang of Imran Mehendi for this job. When the relatives of Nilesh, including his mother started searching for Nilesh as he was not seen by after April 2011, Gajanaj Mhatre took decision to finish Sindhubai, who was asking him time and again about Nilesh. The Gang of Imran Mehendi was hired for finishing Sindhubai and she was also murdered.

9. *S.I.T. police have recovered a diary of Gajanan Mhatre, in which Gajanan has noted the dates of murder of Sindhubai and Nilesh. Statement of second wife of Gajanan namely Indubai is recorded and it shows that she had made enquiry in Wash village about Nilesh, where Nilesh was living and it was informed to her that Nilesh had left long back for Aurangabad and he had not returned. Statement of Indubai shows that she had also made enquiry with Gajanan Mhatre about Nilesh, but he had given evasive answer. Gajanan Mhatre never gave missing report in respect of both Nilesh and Sindhubai. Sindhubai was missing from August 2011.*

10. *The statement of Indubai shows that after recovery of dead body of Sindhubai, when Gajanan Mhatre was arrested, he confessed to her that he had hired Gunda persons for finishing both Sindhubai and Nilesh. He specifically informed that Nilesh was finished in April 2011 and Sindhubai was finished in August 2011. He gave reasons to*

her for finishing these two persons. He informed that before handing over Sindhubai to this gang, he had mixed sleeping pills in her dinner and then she was taken to Savangi by aforesaid gang.

11. *The papers of investigation include the statements of associates of Imram Mehendi and also his statement and they are to the aforesaid effect. The record shows that Gajanan Mhatre had collected money by selling Scooty vehicle, by selling a plot and by withdrawing amount from his G.P.F. account. He had given around Rs. 2.65 lakhs to this gang for the aforesaid job.*

12. *The papers of investigation show that the gang of Imran Mehendi had started process of manufacturing country made fire arms. Some spare parts are recovered on the basis of statement given by associates of Imran Mehendi.*

13. *On the basis of statement of one of the accused namely Sayyed Zahir alias Shera articles of deceased Nilesh like his black canvass bag and his two note books, having his hand writing are recovered.*

14. *There are statements of Rajendra alias Ganesh, brother of Gajanan and one more brother of Gajanaj and also of Gangabai, mother of Gajanan to the effect that Nilesh was called to Aurangabad by the applicant - Gajanan in April under pretext that he had found a job for Nilesh. After that Nilesh had not returned to Washi. The statements show that Gajanan himself had taken Sindhubai from Washi to Aurangabad and after that she was not seen alive. Their statements show that Gajanan was avoiding to give*

information in respect of both Nilesh and Sindhubai. Their statements show that after the arrest, Gajanan confessed to them about the aforesaid two murders.

15. *The dead body of Sindhubai was recovered on the basis of statement given by one of the associates of Imran Mehendi under section 27 of Evidence Act. The record produced shows that in C.R. No. 21/2012 registered in Begumpura Police Station, chargesheet for offence of murder, conspiracy of murder and also for offence under section 3 (1) (i) (ii), 3 (2), 3 (4) of MCOC Act, 1999 is filed. Many murders are committed by this gang with sole objective of gaining illegal pecuniary benefit for their syndicate/gang and for themselves. Atleast 5 dead bodies are recovered. The Crime No. 21/2012 is registered in respect of murder of Sindhubai, wife of applicant Gajanan Mhatre.*

16. *The record shows that this syndicate has committed 13 offences. Imran Mehendi is the leader of this syndicate. As against Imran Mehendi during last 10 years atleast six crimes are registered and two cases are filed under MCOC Act. As against Sayyed Nazer Ali 9 crimes are registered in Aurangabad city. As against Shaikh Imran alias Sultan 3 crimes are registered in Aurangabad city. As against Sayyed Zahir alias Shera 6 crimes are registered in Aurangabad city. As against Nooman Khan 5 crimes are registered in Aurangabad city. As against Zuberkhan 2 crimes are registered in Aurangabad city. As against Habib Khaled 2 crimes are registered in*

Aurangabad city. As against Mohammad Shoyeb 2 crimes are registered in Aurangabad city. As against Farid Khan s/o. Firoz Khan 3 crimes are registered in Aurangabad city. As against Shaikh Hasan Shaikh Husein 3 crimes are registered in Aurangabad city. As against Akib alias Ashu 2 crimes are registered in Aurangabad city. The aforesaid 11 members of syndicate have committed the offences as associates of Imran Mehendi. In two cases, the provisions of MCOC Act are used against the applicants. They are committing murders only for making money. Thus, there is danger to the society from the applicants. There is possibility of their absconding. There is possibility of tampering with the prosecution witnesses and there is strong possibility of committing of the similar offences, if bail is granted to them. In view of these circumstances, this Court holds that it is not a fit case to grant bail and the application stands rejected.

6. It is pointed out that the application of Numan Khan is already disposed of as withdrawn.

7. Learned counsel for the Applicants submitted that, on instructions, he wants to withdraw Criminal Application No.675 of 2014 filed by Juber Khan S/o Shabbir Khan and Habbib Khaled S/o Habib Momommad Chus. The said application stands disposed of as withdrawn.

8. In view of the aforesaid discussion, this Court holds that

-(12):-

674

this is not a fit case to grant bail to other Applicants.
Applications are rejected.

[T. V. NALAWADE, J.]

Dt.12/01/2015
ans/674